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COMMITTEE AGAINST TORTURE

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION

Initial reports of States parties due in 1988

Addendum

CAMEROON*

25 April 1991

I. GENERAL INFORMATION

1. Cameroon has proclaimed its commitment to respect for human rights ever since it attained international sovereignty on 1 January 1960. That commitment has remained constant throughout the successive Constitutions it has adopted during the decisive stages which have marked its development as a State (1960 Constitution, 1961 Constitution, 1972 Constitution). The most recent Constitution, of 2 June 1972, guarantees the protection of human rights. In this connection, a number of its provisions prohibit torture and other cruel, inhuman or degrading treatment or punishment. The preamble stipulates:

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* This document contains the supplementary report requested by the Committee against Torture at its third session, at the conclusion of the consideration of the initial report of Cameroon (CAT/C/5/Add.16) which took place on 20 November 1989 (see CAT/C/SR.34 and 35 and the annual report of the Committee against Torture: Official records of the General Assembly, forty-fifth session, Supplement No. 44 (A/45/44), paras. 251 to 279).

"The Cameroon people hereby proclaim their commitment to the fundamental freedoms enshrined in the Universal Declaration of Human Rights and the Charter of the United Nations and, in particular, to the following principles:

Freedom and security are guaranteed to each individual, subject to respect for the rights of others and the higher interest of the State;

No one may be compelled to do what the law does not prescribe;

No one may be subjected to prosecution, arrest or detention except in the cases and in accordance with the procedures determined by law;

No one may be judged or punished except by virtue of a law promulgated and published before the offence was committed;

All men shall have the right to justice."

2. Since, under article 20 of the Constitution, the fundamental guarantees and obligations of the citizen and the protection of individual liberty are governed by the law, a number of legislative instruments and regulations have been drafted which guarantee the protection of human rights, in particular by prohibiting any cruel, inhuman or degrading treatment of offenders not only at the stage of preliminary investigation but also at the time of trial and of execution of the sentence.

3. From among these instruments, reference should be made to the Penal Code, the Civil Code, the Code of Criminal Investigation, the Criminal Procedure Code (which applies in the English-speaking provinces of Cameroon), the Code of Civil and Commercial Procedure and the Press Act.

4. The Code of Criminal Investigation lays down the procedure to be followed for dealing with the suspect from the time of his arrest until he is brought before the competent judge. If he is convicted, he enjoys all the remedies provided for by law, that is to say, he can apply for the case to be reheard, and can appeal on a point of fact or law.

5. Also, the Penal Code covers and makes punishable, under articles 276 to 281, all kinds of offences against the person committed with intent, from slight injuries to murder, including actual bodily harm, grievous bodily harm, fatal blows and homicide and, in articles 291 to 294, all kinds of offences against freedom and breaches of the peace.

6. These different legislative instruments all provide guarantees against the use of torture and other cruel, inhuman and degrading treatment or punishment. They are applied by the ordinary courts, the organization of which is governed by Order No. 72/4 of 26 August 1972. Article 5 of the Order stipulates that judges shall state the reasons, in fact and in law, for their decisions, failing which the latter will be invalid. The judge must not only exercise his discretion in weighing the evidence adduced during the hearings in order to arrive at this conclusion but must do so having strict regard to respect for the rights of the defence, the principle of which has been

constantly affirmed by case law from the Supreme Court, which has held "that any person who is tried before the criminal courts shall have the right to a defence" (Decision No. 115 of 11 May 1978, Bulletin No. 39, p. 5726).

7. Cameroon is also party to various international instruments. These instruments contain or may contain provisions on application that are wider in scope than those provided for under the Convention. In this connection reference may be made to:

The International Convention on the Elimination of All Forms of Racial Discrimination (ratification 24 June 1971);

The International Covenant on Civil and Political Rights;

The Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity (accession 6 October 1972);

The International Convention on the Suppression and Punishment of the Crime of Apartheid (ratification 1 November 1976);

The Convention on the Elimination of All Forms of Discrimination against Women (ratification 6 August 1983);

The Convention relating to the Status of Refugees (ratification 23 October 1961);

The Protocol relating to the Status of Refugees (accession 19 June 1967);

The Universal Declaration of Human Rights;

The African Charter on Human and Peoples' Rights.

In ratifying these different international instruments, Cameroon's intention was to reiterate its commitment to the ideals proclaimed by the Charter of the United Nations and, more particularly, to respect for human dignity.

8. It should be noted that treaties and agreements duly ratified or approved by Cameroon take effect as soon as they are promulgated and published. This is clear from article 2 of Act No. 65/LF/24 of 12 November 1965 setting forth the Penal Code, which reads: "Rules of international law and treaties which have been duly promulgated and published shall prevail over the present Code and any provision of the criminal law". Consequently, there is no need whatsoever to incorporate them into domestic law before they can be applied by the authorities concerned. It only has to be made clear that ratification was effected by the President of the Republic who must, however, first secure authority for this under a legislative instrument.

9. Accordingly, any person who claims to have been injured by the violation of a provision of the Convention can invoke the said provision before the competent courts in order to secure the conviction of the perpetrator of the act in question and, if necessary, compensation for damage suffered. The only

practical difficulty would be how to apply a specific penalty in the absence of corresponding provisions in the Penal Code: in that case there would be a legal void, which would require an appropriate adjustment in the Penal Code.

10. The authorities with competence for the matters covered by the Convention include:

(a) The judiciary. Their main functions are to ensure respect for the rights which all citizens enjoy under the law; to protect the person, property and honour of citizens; to settle any disputes which may arise among them; to prevent crime or, if necessary, to trace offenders so that they may be prosecuted and punished;

(b) The police, both local and national. They are accountable in the exercise of their duties to the magistrates, specifically the government procurator and the Procurator-General;

(c) The penal system, which is responsible for preventive detention, the imprisonment of convicted offenders, and administrative custody;

(d) The medical service; apart from its specific role of providing medical care, it has a role to play in determining the criminal nature of violations of the person.

11. Under the criminal law of Cameroon, any breach of the criminal law is deemed to constitute an infringement of public order, and will therefore always give rise to public right of action, the purpose of which is to establish the offences, to seek to ascertain who is guilty of the offences, and to bring such persons before the courts for punishment. If the same offence constitutes a civil wrong, it will also give rise to the right of civil proceedings to remedy the damage caused to the injured party.

12. As the law stands at present, there is no programme for rehabilitating victims of torture.

13. The practical problems encountered in performing the obligations arising from the Convention are to some extent financial, owing to the limited budgetary resources available. They also include a human element, in that the level of professional awareness among the staff of the public services concerned is somewhat limited.

II. INFORMATION CONCERNING ARTICLES 2 TO 16 OF THE CONVENTION

Paragraph 1

14. The Republic of Cameroon possesses the appropriate legal machinery to prevent the practice of torture on its territory.

The Constitution of 2 June 1972 guarantees the freedom and safety of every citizen. Its preamble contains a provision, which we have already mentioned, stipulating that no one may be subjected to prosecution, arrest or detention, except in the cases and in accordance with the procedures determined by law.

Procedural methods and rules also offer reliable protection against the use of torture.

Order No. 72/4 of 26 August 1972 on judicial organization, as amended by the recent Act No. 90/058 of 19 December 1990, provides as follows (art. 1): "Justice is dispensed by: traditional courts, courts of first instance, courts of major jurisdiction, Appeal Courts, the Court of National Security and the Supreme Court".

15. The courts listed above, in ascending order of importance, have sole jurisdiction to try offences committed by individuals, each in the proper sphere attributed to it by the law, and in accordance with well-established procedures. For instance, article 13 of the above-mentioned Order No. 72/4 provides that the court of first instance is competent in penal matters to try all offences except serious crimes. According to article 15 of the same text, courts of major jurisdiction are required to try crimes and related offences, and to entertain applications for immediate release presented by a prisoner or detainee or on his behalf, where such applications are based on an alleged procedural flaw or amount to a plea of wrongful imprisonment.

16. As for military courts, the new article 5 of Order No. 72/5 of 26 August 1972, as amended by Act No. 90/048 of 19 December 1990, gives them jurisdiction to try any person over the age of 18 for:

(a) exclusively military offences, as set out in the Code of Military Justice;

(b) offences of any kind committed by members of the armed forces, with or without the assistance or complicity of civilians either inside a military establishment or in the course of duty;

(c) all offences of any kind which involve a member of the armed forces or a person of like status, and which have been committed in an area where a state of emergency is in force;

(d) all offences related to the above.

17. The principle of dual jurisdiction, allowing for appeals against all decisions handed down by the above-mentioned courts, enables the parties to apply for a rehearing by more experienced judges of all cases open to appeal, on the basis that it is for the Supreme Court to deal with errors of law.

18. Furthermore, the practice of public hearings, in accordance with article 4 of Order No. 72/4 of 26 August 1972, ensures that the law in force is applied to the parties. It offers a reliable bulwark against arbitrary treatment and the inclination to resort to torture, both of which tend to flourish in secrecy.

19. In addition, the rules of criminal procedure give magistrates the authority to inspect the conditions in which suspects are detained in police custody. The Code of Criminal Investigation and Act No. 58/203 of 26 December 1958, which adapt and simplify procedure in criminal cases, include provisions on the arrest and detention of suspects, and the conduct of

the prosecution. The provisions of these texts, which will be examined in detail in connection with article 11, are intended to ensure that the inviolability of the suspect's person is respected in accordance with the requirements of the law.

20. It should be noted here that Act No. 58/203 of 26 December 1958 places a limit of 24 hours on the period of custody of suspects in police stations. This time-limit may be extended only by the Public Prosecutor, who must be informed, under article 42 of that Act, when any arrest is made. The text is as follows:

> "When an arrest has been made, the police officer responsible must immediately report it, by telegram if necessary, to the Public Prosecutor. If preventive custody appears to be essential, and it seems undesirable to transfer an accused taken in flagrante delicto, information must be laid before a magistrate immediately.
>
> The court will give the necessary authorization."

21. It should also be pointed out that arrests of this kind may be made only in the case of serious crimes or offences. Article 3 of Act No. 58/203 of 26 December 1958 provides as follows:

> "In the case of serious offences or offences defined as serious in article 41 of the Code of Criminal Investigation, or cases of serious wrongs or wrongs covered by article 1 of the Act of 20 May 1963, the criminal investigation officer who arrests the suspects must bring them before the government procurator, with a full report on the police measures taken, within 24 hours.
>
> If, on the expiry of the 24 hour time-limit, the preliminary inquiry or the preparation of the report have not been completed, the criminal investigation officer may not continue to detain the suspects unless authorized to do so by the court referred to in the preceding paragraph, or if no magistrate is available at the police station, by the subdivisional chief or the administrative head of service. Such authorization is valid for 24 hours only, and may be renewed not more than three times."

It follows that, at worst, the duration of police custody may not exceed four days.

22. It is appropriate to mention that the provision authorizing the local administrative authority (subdivisional chief or administrative head of service) to extend the period of police custody is no longer in force, now that the country's judiciary coverage has been extended and courts of first instance have been created and set up in the capital of each département and of numerous arrondissements. In the English-speaking provinces of the Republic, the period of police custody, which is also 24 hours, is strictly limited and the suspect may be detained for a longer period of time only under a warrant issued by the competent magistrate.

23. With respect to both the gendarmerie and the police, the procedure to be followed in the case of police custody is set forth unequivocally in the regulations pertaining to each of those forces. Thus, article 137 of Decree No. 60/280 of 31 December 1960 relating to the gendarmerie expressly prohibits soldiers of the gendarmerie from carrying out any act of torture, as follows:

> "Military escort officers must take the measures necessary to prevent the escape of prisoners. Any unnecessary severity is expressly prohibited.
>
> The law prohibits any individual, and in particular agents of the armed forces, from causing persons under arrest to be subjected to ill-treatment or abuse, or from using any violence against those persons, provided that there is no resistance or rebellion, in which case only, they are authorized to use force to defend themselves against assault upon them during the exercise of their duties."

24. Similarly, in its memorandum No. U 17/SESI/L of 18 November 1985, the Secretary of State for Internal Security, in reminding senior police officers of the provisions of article 41 of the Code of Criminal Procedure in respect of the procedure for reporting offences to the Public Prosecutor and the obligation to carry out an investigation of these offences concludes:

> "Under certain circumstances of place, time or necessity, for the purpose of pursuing the truth, the criminal investigation officer may detain a person in custody; that officer must report this action to the judicial authority authorized to extend the duration of the custody, which may not exceed 72 hours.
>
> Under the Code of Criminal Procedure, the criminal investigation officer is also responsible for the inviolability of the person of the detainee - hence the significance of the problem that arises in the event that the detainee suddenly falls ill or dies.
>
> Holding individuals in custody is thus a procedure which can admit neither of whim nor arbitrary action and which requires a particularly rigorous application of the law."

In the same memorandum, the Secretary of State for Internal Security set out the information to be entered in the registry of the police inspector, with emphasis on the following items: "the authority ordering the detention; the general aspect of the individual at the time of detention; and the general state of health of the detainee at the time of his transfer or of his release".

25. The holding of persons in police custody is in all cases carried out under the authority and control of the government procurator, in conformity with article 9 of the Code of Criminal Procedure, as amended by article 3 of Act No. 58/203. This text gives the government procurator the right and, at the same time, the obligation to visit police commissariat and gendarmerie brigade cells in order to verify the physical presence of the individuals being detained in them as well as the reasons for and conditions of their detention. This control function may not always be carried out under optimum

conditions, owing to the modesty of the available material and budgetary resources and depending on changing mentalities, in particular the degree of conscientiousness which the average staff member of these units brings to the job.

26. The relevant provisions of the Code of Criminal Procedure and those of Decree No. 73/774 of 11 December 1973, which establishes prison regulations, deal with the food, health and hygiene of prisoners and accord them the right of complaint. These provisions will be examined during the consideration of article 11 of the Convention.

Article 2, paragraph 2

27. Neither a state of war nor a state of exception can be invoked in order to justify torture. Under the terms of article 11 of the Constitution of 2 June 1972, the President of the Republic may, when circumstances so require, proclaim by decree a state of emergency which confers upon him special powers under the conditions established by the law. The law applicable in this case is Act No. 90/047 of 19 December 1990, under which, in the event of a state of emergency, the Government has the authority to do the following:

(a) Subject the movement of persons and goods to restrictive measures and possibly to government authorization;

(b) Order the return of weapons, munitions, military clothing, camp equipment and radios and search for and seize such items;

(c) Prohibit any meeting or publication likely to foster disorder;

(d) Set up protection areas or security zones in which the movement of individuals is restricted;

(e) Require the military authorities to participate on a continuing basis in maintaining public order, as permitted by law;

(f) Authorize any civil or military police officer to carry out house searches, by day or night, as permitted by law;

(g) Order the holding in police custody, for 7 days when the order is issued by a prefect and 15 days when issued by a governor, of individuals considered to be a threat to public security; these individuals may be held in any premises, including a special area within a prison.

These extended powers may not at any time be considered to authorize or give legitimacy to committing acts of torture.

Article 2, paragraph 3

28. An order from a superior officer or public authority may not be invoked as justification of torture. While it is true that article 83 of the Penal Code provides under its first paragraph that "criminal responsibility may not arise from an act carried out on the order of a competent authority to which obedience is rightfully due", the second paragraph of that same article

qualifies the exoneration from responsibility in these terms: "The provisions of the preceding paragraph are not, however, applicable if the order is manifestly unlawful".

29. It follows from the provisions of this text that an order from a superior officer may be invoked only when two conditions have been met: (a) the order must be given by a competent authority to which obedience is due, and (b) the order must be lawful. Where an unlawful order is issued by a competent authority, the order cannot be carried out. If such an order should be carried out, the individual who has executed the order cannot invoke obedience to a legal authority. Given that torture is a manifestly illegal act, it follows that a public servant who was charged with committing acts of torture could not invoke obedience to a legal authority.

30. This legislation has found expression in the jurisprudence of the Supreme Court. In its judgement of 7 October 1969, the High Court of Cameroon affirmed "that obeying the orders of a superior officer is, for civil servants and officials, neither a justification nor an excuse; that, similarly, an individual charged with an offence cannot invalidate that offence by claiming merely to have been carrying out the orders of his superiors; assuming that it is so established, that circumstance does not nullify the responsibility of the accused: the accused may not avoid the criminal consequences arising from his direct and personal acts, unless he has been constrained to carry out these acts by a force which he was unable to resist".

31. Under article 49 of Decree 74/138 of 18 February 1974, on the general civil service regulations, a public official is required to follow the specific or general orders from his superiors within the framework of the existing laws and regulations governing public service. Thus, a public official is required to follow orders only when they conform to the relevant laws and regulations; that is not the case with respect to acts of torture, which are manifestly illegal.

32. In the same context, article 18 of Decree 77/48 of 14 February 1977, establishing the special regulations of the Sûreté, provides that "every official of the Sûreté, irrespective of rank, is responsible for the execution of the tasks entrusted to him. Action may not be taken against him for an act properly carried out within the bounds of his authority or in conformity with an order issued by his superiors within the framework of laws and regulations". It follows clearly from the legislation and regulations cited above that an order from a superior officer or public authority may not in any way be used to justify an act of torture constituting a criminal offence or simple professional misconduct.

Article 3

33. Cameroon acceded on 19 June 1967 to the Protocol relating to the Status of Refugees, which entered into force on 4 October 1967, and is a party to the Convention relating to the Status of Refugees, adopted on 14 December 1950. Cameroon applies, inter alia, article 33 of the Convention, which reads as follows:

> "No Contracting State shall expel or return ("refouler") a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion."

Therefore, no refugee can be returned to a country where the authorities believe that he might be exposed to acts of torture.

34. With respect to returning other foreigners, that is, those who are not permitted to enter the national territory, such foreigners remain the responsibility of the transporter, as provided for under article 38 of Decree No. 90/1246 of 24 August 1990, which establishes the conditions of entry, stay and exit for foreigners. This text states the following:

> "The transporter remains responsible for foreigners who do not meet the conditions for entry into Cameroon and for whom admission to the country has been refused by the head of the Sûreté's border control post. The parties concerned must leave the Cameroonian frontier immediately."

It follows from the provisions of this text that Cameroon does not return to a particular country a foreigner who has been refused admission to Cameroon. These provisions are not therefore contrary to the provisions of article 3 (1) of the Convention.

35. The same applies to the return of illegal aliens. Article 37 of the Act referred to above states:

> "Illegal aliens, in particular temporary visitors, tourists and individuals in transit who have stayed on after the expiry of the authorized period of their stay, and illegal immigrants shall, without prejudice to any proceedings, be returned at their own expense or, if need be, at the expense of the Cameroonian Treasury."

This text does not stipulate that these illegal aliens must necessarily be returned to their country of origin. Similarly, the law does not specify a precise destination for residents who have been expelled. Thus, where a foreigner is returned or expelled, the fact that the individual is free to choose his destination provides the strongest guarantee against any possible threats of torture from the authorities in his country of origin.

36. Act No. 64/LF/-13 of 26 June 1964 established an extradition régime in Cameroon. Article 11 of the Act states that extradition may be granted only if the act in respect of which it was requested was perpetrated on the territory of the petitioning State or mutatis mutandis constitutes an offence whose prosecution in Cameroon would be authorized by the present Act if it was committed abroad. In addition, the act upon which the application for extradition is based shall:

(a) both under the law applicable to its place of perpetration and under the law of the petitioning State and the law of Cameroon, either constitute an offence punishable by a maximum custodial sentence of not less than two years' duration and whose prosecution is not prevented by a limitation period, amnesty

or any other cause, or shall constitute a custodial sentence still susceptible of execution, of at least six months' duration, irrespective of enforcement by commital;

(b) constitute an ordinary offence under Cameroonian law; finally, the application for extradition may not be based on political grounds.

37. Thus, under Cameroonian law, extradition of a foreigner is subject to several conditions, as follows:

(i) the nature of the offence;

(ii) the requirement that the foreigner be charged first under Cameroonian law, second under the law of the petitioning country and third under that of the country on the territory of which the offence was committed;

(iii) the absence of any legal obstacle in the way of prosecution (limitation period, amnesty, etc.);

(iv) the nature of the penalty incurred; and

(v) the nature of the sentence handed down and its enforceability.

38. According to law, the offence must be an ordinary offence; this requirement excludes automatically from the scope of application any extradition based on a political offence, the perpetrators of which are, by tradition, most likely to be tortured. Furthermore, even in the case of proceedings or convictions arising from ordinary offences, Cameroonian officials are authorized by law to ensure that the actual grounds upon which the charges are based are not political.

39. In respect of procedure, extradition is ordered by decree of the President of the Republic, but only after having received the reasoned opinion of the competent Court of Appeal. The procedure before the Court of Appeal is established under articles 21 and 22 of the law, as follows: within eight days following the service of the arrest warrant, the foreigner, with the assistance, if necessary, of his lawyer and an interpreter, must appear before the Court of Appeal, which in all cases keeps a record of the proceedings (art. 21); "The Court, whose decision shall be final and shall be made on the basis of the dossier specified in article 15 and the records of the hearings, done in application of articles 18 and 20 above, shall issue, having heard the public prosecutor, the foreigner, and his lawyer, an opinion on the admissibility of the request for extradition" (art. 22). The task of the Court of Appeal is thus to ensure that the conditions set forth by law have been met.

40. It should be stressed a decision of inadmissibility from the Court of Appeal results in the immediate release of the foreigner, if he is not detained on other grounds, and definitely makes it impossible for the same individual to be extradited at a later time by the same petitioning State, on the same grounds. It is clear that the stringent Cameroonian law concerning

extradition does not leave much latitude for the authorities of a foreign petitioning country to recover, for the purposes of torture, a foreigner residing on national territory.

Article 4, paragraph 1

41. Cameroonian penal law does not refer explicitly to torture as it is defined in article 1 of the Convention. Nevertheless, the law covers a wide variety of the most common forms of behaviour which constitute acts of torture within the meaning of the Convention. These forms of behaviour may be categorized according to whether they represent offences against the person, or violations of personal freedom or tranquillity.

42. In respect of offences against the person, the Penal Code provides graduated sanctions according to the seriousness of the victim's injuries:

(a) Murder (art. 275), by which is meant the act of voluntarily causing the death of another person;

(b) Premeditated murder (art. 176), which refers to murder committed under the following circumstances:

(i) with premeditation

(ii) by the use of poison

(iii) in order to prepare for, facilitate or carry out a crime or offence; to facilitate escape; or to ensure the impunity of the perpetrators of or accessories to that crime or offence;

(c) Serious injuries which, under article 277, are those which permanently deprive another person of the use of all or part of a limb, an organ or a sense;

(d) Fatal injuries, defined under article 278 as assault which results involuntarily in the death of another;

(e) Assault with serious injuries, defined under article 279 as assault which results involuntarily in injuries as described in article 277 cited above;

(f) Ordinary injuries (art. 280), that is, assault which causes another person, even involuntarily, to suffer illness or incapacity for work for a period of more than 30 days;

(g) Slight injuries, the definition of which is the same as that for the preceding offence, the sole difference being that the resulting period of incapacity must last more than eight days and no longer than 30 days; if the period of incapacity is less than eight days, the act is considered to be a minor offence (art. 370).

43. The violations of personal freedom include:

(a) arrest and sequestration (art. 291), defined as the act of depriving another person in any manner whatsoever of his freedom;

(b) forced labour (art. 292), where an individual, for his personal interests, causes another individual to perform work or services which that individual has not freely offered to undertake;

(c) slavery (art. 293), where an individual reduces others to or keeps them in a state of slavery or, even on occasion, engages in trafficking in persons.

44. In respect of violations of tranquillity, the following may be cited:

(a) ordinary threats (art. 301), whereby an individual threatens another, in writing or by representation, with assault, destruction of property or breach of domicile;

(b) conditional threats (art. 302), whereby an individual threatens another, even implicitly, with assault, seeking to impose an order or condition;

(c) blackmail (art. 303) where an individual, imposing orders or conditions, threatens to defame or make a revelation with respect to another.

45. Apart from their motive, the acts of torture defined in article 1 of the Convention are by definition committed by public officials. Under Cameroonian penal law, and under the terms of article 131 of the Penal Code, a public official is considered to be "... any magistrate, public or ministerial officer, State official or clerk, any public corporation, State enterprise or quasi-public corporation or public or ministerial office, any member of the armed forces or of the gendarmerie, any agent of the Sûreté or the prison administration, or any person entrusted, even on occasion, with a public mandate, mission, or service and acting in the exercise of his duties".

46. The definition of a public official thus covers a vast and varied group of people and is notable by virtue of its scope. In addition, the penalty for certain offences is greater if the offence has been committed by a public official; among such offences are those constituting acts of torture, as will be seen in the observations concerning paragraph 2. Moreover, the very existence of certain offences is linked in a fundamental way to the concept of public service. Thus, article 132 provides for six months to five years of imprisonment for any public official found guilty of violence against another person. We arrive then at the case of an offence against the person, considered in itself, disregarding the victim's injuries resulting from the offence.

47. Moreover, article 285 of the Penal Code relates the very broad definition of a public official, illustrated above, and the possibility of extending acts of violence to include the acts specified in that article, as follows:

"For the purposes of this Code, the following will be treated as equivalent to violence and assault:

(a) administering any substance harmful to health;

(b) neglect (of a disabled person) as provided in article 282;

(c) the refusal, by a person having legal or actual custody, to provide food or care, to the point of endangering the health of a person in custody who is unable to remove himself from custody and who cannot protect himself."

48. Finally, there is another provision of the Penal Code which, although not framed especially for that purpose, can be used, if necessary, to punish acts of torture, namely article 140, paragraph 1, which reads as follows:

"Any public official who abuses his position to jeopardize private interests or rights will be punished by a term of imprisonment of between three months and one year, and by a fine of 5,000 francs, or either of these two penalties alone."

49. Under the Penal Code, the penalties for offences constituting torture apply equally to the attempt to commit such offences (art. 94), complicity or attempted complicity (art. 97), duress (art. 96), and conspiracy, defined as a joint decision on the part of two or more persons to commit such an offence (art. 95).

Article 4, paragraph 2

50. The above offences are punished by lengthy terms of imprisonment. For instance, murder is punishable by life imprisonment, and premeditated murder by the death penalty. Other forms of injury to the person are punished by a maximum of 20 years' imprisonment for serious injury and fatal injury (arts. 277 and 278), 20 years for assault with serious injuries (art. 279), 5 years for ordinary injuries (art. 280) and 2 years for slight injuries (art. 181). As for the other offences mentioned above, the maximum penalty is: 20 years for slavery (art. 293), 10 years for arrest, sequestration and rape (arts. 291 and 296), 5 years for forced labour (art. 292), 3 years for neglect of a disabled person and threats (arts. 282 and 301).

51. As indicated above, where the offender holds a public office the gravity of certain offences is increased, and in such cases the penalties are doubled, in accordance with article 132, paragraph 2. Finally, a public official found guilty of violence towards another person (art, 132, para. 1) is punished by imprisonment of from six months to five years.

Article 5, paragraph 1

52. Article 7, paragraph 1, of the Penal Code provides that: "The criminal law of the Republic shall apply to any act perpetrated on its territory". Paragraph 1 continues "The territory of the Republic includes its territorial

waters, the airspace above that territory and those waters, and ships and aircraft registered in the Republic". The above-quoted provisions accurately reflect the concerns expressed in article 5, paragraph 1, of the Convention.

53. According to article 10 of the Penal Code, the criminal law of the Republic applies even to acts perpetrated abroad by a citizen or by a resident, provided that they are punishable by the law of the place where they are perpetrated and are characterized as serious or correctional offences by the laws of the Republic. Consequently, in the case of acts perpetrated abroad by a citizen or resident of Cameroon, the law of Cameroon will be applicable only if such acts are open to prosecution under the law of the place where they are perpetrated, and if they are not merely minor offences.

Article 5, paragraph 2

54. Cameroonian law has no express provision for conferring jurisdiction on the courts of the country to try offences committed by foreigners against nationals of Cameroon. Accordingly, offences of this kind can be prosecuted only where there is an agreement to that effect between Cameroon and the country of origin or residence of the perpetrator. To ensure the effective application of the Convention, it would be appropriate to remedy this deficiency, even if this involves stretching to some degree the principles which, under the law of Cameroon, govern the jurisdiction of the criminal courts. Article 10 of the Penal Code provides for the prosecution of offences committed abroad by a resident of Cameroon, if he is on Cameroonian territory.

55. However, under the laws of Cameroon the courts of Cameroon are competent to try certain acts of torture, even if they have been perpetrated abroad by a foreign national. For instance, article 11 of the Criminal Code states that the criminal law of the Republic applies to traffic in persons and to slave-dealing, even where these offences are perpetrated outside the territory of the Republic. However, a foreigner may not be prosecuted on the territory of the Republic for acts perpetrated abroad unless he was arrested on the territory of the Republic and has not been extradited, and on condition that proceedings have been instituted by the government procurator's office.

Article 6, paragraphs 1 and 2

56. Two different situations may arise: either the perpetrator of acts of torture is punishable under Cameroonian law, or being a foreigner who perpetrated the acts abroad, he is the subject of a request for extradition.

(a) In the former case, depending on whether the acts were committed in Cameroon or abroad by a national or a resident of Cameroon, since Cameroonian law is applicable under the above-mentioned provisions of articles 7 and 10 of the Penal Code, to which should be added the so-called international offences covered by article 11 of the Code (trafficking in persons, slave-dealing ...), the persons concerned may be arrested and prosecuted under the conditions already referred to in the Code of Criminal Procedure with regard to police custody.

(b) In the latter case, several time-limits apply to the detention of a foreigner. Within 24 hours of his arrest, he must be presented to the Public Prosecutor, who will notify him of the grounds on which he is being detained (art. 18 of Act No. 64 of 26 June 1964), and must then be brought before the appeal court of local jurisdiction within eight days of such notification (art. 21 of the Act).

57. In any event, under article 27 of the above-mentioned Act, the foreigner will be released on bail pending either the transmission of a documented request for extradition by the authorities of the requesting country (within one month of his arrest), or pending an order for extradition (within two months of a decision by the appeal court to extradite). Hence Cameroonian law judiciously weighs the need for swift and effective prosecution against the requirements of personal freedom.

Article 6, paragraph 3

58. The law on extradition does not contemplate the need for a foreigner subject to extradition proceedings to communicate with the representatives of the State whose nationality he possesses. However, in practice, there would seem to be nothing to prevent such communication, at least through a lawyer; and the foreigner is free to choose his own lawyer.

Article 6, paragraph 4

59. As indicated in the preceding paragraph, there is no requirement under the law of Cameroon for the Cameroonian authorities to notify the authorities of the other States concerned as soon as a suspect is arrested on the territory of Cameroon, or to communicate to them the findings of the preliminary inquiry which follows such an arrest.

Article 7, paragraph 1

60. The comments on article 5 apply equally to this paragraph.

Article 7, paragraph 2

61. It has already been explained that under the criminal law of Cameroon there is no exception for acts of torture, which are covered by the ordinary law for the purpose both of defining the acts and of prosecuting them. Hence there can be no distinction in the applicable rules of evidence. Moreover, attention has already been drawn to the severity of the penalties for offences constituting acts of torture. All offenders receive the same equitable treatment at every stage of the proceedings, in accordance with the general principles of equality before the law, the nature of the offence and the presumption of innocence.

Article 7, paragraph 3

62. Apart from the standards laid down by the Code of Criminal Investigation, mention should be made of the provisions of article 14 of the International Covenant on Civil and Political Rights, to which Cameroon is a party.

Article 8, paragraph 1

63. Apart from political offences, the offences covered by the ordinary law, including offences relating to torture, may constitute grounds for extradition without the need for specific mention in an extradition treaty. However, this provision must be taken into account in any treaty of this nature which Cameroon might in future conclude with a State party to the Convention.

Article 8, paragraph 2

64. Act No. 64/LF/13 of 26 June 1964 enacting the regime of extradition in Cameroon did not make extradition conditional on the existence of a treaty. The Act merely lays down certain conditions which, if fulfilled, make extradition possible.

Article 8, paragraph 3

65. Cameroon is one of those States referred to in paragraph 3; it recognizes acts of torture as extraditable offences. Practical difficulties may, however, arise because of the interplay between the political nature of an offence and its character as an act of torture. In that case, and in the absence of any provisions on the subject in the Act of 26 June 1964, it may be surmised that the provisions of the Convention prevail over those of the Act, which rules out extradition for all political offences; accordingly the offender in that case may be extradited.

Article 8, paragraph 4

66. This provision, which is obviously calculated to strengthen the effective prosecution of acts of torture, does not call for any special comments.

Article 9

67. Although Cameroon has signed agreements on mutual judicial assistance with certain countries (General Convention on Judicial Cooperation, ratified on 9 April 1962, binding Cameroon with the French-speaking African countries; General Convention on Judicial Cooperation with Mali, ratified on 16 June 1964; Agreement on Judicial Cooperation between the Government of Cameroon and the Government of the French Republic, ratified on 19 June 1974), it does not make its judicial cooperation dependent upon the prior existence of such agreements. This cooperation is moreover illustrated by Act No. 64/LF/13 of 26 June 1964 enacting the regime of extradition inasmuch as that Act specifies in its article 26 that "In all cases, the court is empowered to authorize, by means of a judgement, the transmission to the requesting Government, in whole or in part, of the securities, valuables or objects seized, even if the request for extradition is inadmissible, is rejected or cannot be acted upon for any reason whatsoever". Furthermore, Cameroon provides an example of cooperation by transmitting regularly to numerous foreign Governments, in particular neighbouring ones, extracts from Bulletin No. 1 of the police record of their nationals who have been convicted of offences by a final decision of a Cameroonian court.

Article 10

68. Training for the various bodies contributing to the administration of justice and the application of penalties is provided by various special institutions, which impart both basic legal knowledge and the vocational guidance specific to each corps. Thus the provisions of the Penal Code and the Code of Criminal Investigation which contain the essential rules relating to the prohibition of torture are taught for several years to trainees for the Judiciary who are candidates for judicial appointments. Similarly, gendarmes, police officials and officials of the prisons administration are given suitable tuition on their particular status and on the rules governing the performance of their duties. These directives are contained, with regard to the gendarmerie, in Decree No. 60/286 of 31 December 1960, and for the other two above-mentioned bodies, they are the subject of Circular No. 017/SESI/L of 18 November 1985 issued by the Secretary of State for Internal Security and Decree No. 73/774 of 11 December 1973. The extracts of the first two above-mentioned texts supplied earlier in the passages dealing with paragraph 1 of article 2 are significant in that respect and illustrate the clear nature of the directives transmitted. Lastly, the tuition dispensed to medical students and apprentice male nurses includes the legal knowledge needed for the practice of the medical profession.

Article 11

69. Independently of the hierarchical control which is inherent in each of the corps concerned, the control of the legal provisions enacted by the Code of Criminal Investigation is the responsibility of the Judiciary and in particular of the government procurator under the authority of the Procurator-General. This Code thus makes the members of the Judiciary the guarantors of individual freedom, responsible in that capacity for the control at all stages of the proceedings of the lawfulness and regularity of any deprivation of freedom. This mission is being effectively carried out with some results. Thus, the cells of the brigades of gendarmerie and of police stations are periodically visited without notice by the government procurator and his staff, in the framework of the control of custody. Similar visits are made to prisons, with the purpose of ascertaining, in conformity with article 605 of the Code of Criminal Investigation, that no one is being detained unlawfully and that the duration of detention of the persons held therein in preventive custody, i.e. awaiting to be finally tried, is not unreasonable.

70. The supervision of prisons is moreover a permanent mission entrusted at the same time to the Commission entitled precisely "Commission on Prison Supervision" and instituted by Decree No. 73/774 of 11 December 1973 on the penitentiary regime at the headquarters of each department and consisting, in accordance with article 57, of the following persons: the prefect or his representative, the president of the court of first instance, the head doctor of the département, an official of the Ministry of Education, Housing and Public Domains and a social worker. In accordance with article 59 of the above-mentioned text, the Commission on Prison Supervision is under a duty to visit all prison premises at least twice a year. The purpose of these visits is to ensure that the prisons have the necessary facilities for maintaining the premises, that the sanitary installations are in order and that the food

of the prisoners is apt to maintain them in good health. Furthermore, in accordance with article 47 of the above-mentioned Decree, prisoners may address their complaints in writing to the prison governor, the chief warden and, if need be, to the Minister responsible for prison administration. In practice, no doubt because of its unwieldy composition, the activity of the Commission on Prison Supervision is not always apparent. Moreover, as has already been stressed, the execution of missions for the control of custody and detention entrusted to judicial officers encounters a number of difficulties of a physical and human order.

Article 12

71. When there is reason to believe that an act of torture or any other offence at criminal law has been committed, an inquiry shall be immediately opened in accordance with the provisions of article 8 of the Code of Criminal Investigation, whereby: "The criminal police shall investigate into crimes, correctional offences and petty offences, gather the evidence and hand over the perpetrators to the courts entrusted with punishing them".

72. Similarly, article 25 of the Code of Criminal Investigation lays down the obligation for certain persons to report offences and to carry out an inquiry immediately. This article provides as follows: "Every established public authority or every public official or officer, who in the exercise of his duties, becomes aware of a crime or an offence, shall have the duty to advise immediately the Prosecutor of the Republic at the court in whose district the crime or offence has been committed or in which the accused may be found and shall transmit to that judicial officer all the information, records and documents relating thereto".

73. These relevant provisions, as well as those quoted above from article 3 of Act No. 58/203 of 26 December 1958, which order police officers to carry out a preliminary investigation in the event of an offence or a crime being committed, carry out the intention of article 12 of the Convention. The police officers may act with greater speed and effectiveness depending on the circumstances in which the offence has been committed, circumstances which may justify resort to the flagrante delicto procedure. It should however, be pointed out, that there may be practical obstacles to the application of the above-mentioned provisions because, by the very nature of things, the premises of the police and gendarmerie are precisely the favourite spots for the perpetration of various acts of torture, so that the solidarity pertaining to each corps stands in the way of the reporting and punishment of those acts.

Article 13

74. Any person claiming to have been subjected to acts of torture as defined in the present convention may lodge a complaint with the police or gendarmerie authorities, or with the Prosecutor of the Republic. According to article 32 of the Code of Criminal Investigation "in all cases of flagrante delicto, when the act concerned can involve an afflictive or deforming penalty, the government procurator shall proceed to the spot without delay in order to draw up the necessary record as evidence of the corpus delicti, its state, and the condition of the site and in order to hear the statements of persons who may have been present or may be able to supply information. As soon as the record

of the inquiry has been drawn up, the government procurator may, in the event of a correctional offence, transmit the case directly to the competent court, in that case the court of first instance, either by way of the flagrante delicto procedure or by direct summons. If the offence constitutes a crime or if, being a correctional offence, it has complex aspects, the government procurator shall open a judicial investigation, at the end of which he shall hand down either an order declaring that there is no case to answer or an order referring the case to a competent court for trial (High Court, for crimes).

75. It should be made clear that if the presumed offender is a gendarme, the court competent to try the offence will be a military court, because in this case the offence will be regarded as having been committed in a military establishment, or at any event in the course of military service. This follows from article 5 (new article) of Order No. 72/5 of 26 August 1972 on the organization of the military courts, as amended by Act No. 90/048 of 19 December 1990. In such cases, the prosecution is brought by the Government Commissioner, under the authority of the Minister of Defence.

76. Moreover, because the procurator's office has the privilege of deciding whether to prosecute, and whether to stay proceedings, in particular cases, under the Code of Criminal Investigation any person who is the victim of such an offence may issue a summons to the perpetrator, through a bailiff, to appear directly before the trial court in the case of a correctional offence (art. 61, para. 2 of the Code of Criminal Investigation), or lodge a complaint with the government procurator, together with notice of civil proceedings. The effect will be to deprive the prosecution of the power to abandon the case and compel it to open a criminal investigation, with the consequences we have already described (cf. art. 63 et seq., Code of Criminal Investigation).

77. At the trial stage, the decisions of the lower courts may be appealed to the Supreme Court if there is a breach of law. This reduces the risk of partiality by guaranteeing access to the appeals machinery.

78. Steps are taken to guarantee the protection of the complainant and witnesses against any form of ill-treatment or intimidation which may follow from lodging a complaint or making statements in evidence. The Penal Code defines a whole range of offences in this category, all carrying appropriate penalties. This applies, for instance, to all offences involving violation of the person, which are referred to in the comments on article 4 of the Convention.

79. The provisions of articles 301, 302 and 303 of the Penal Code deal with intimidation of the victim and of witnesses. Article 301 prescribes a penalty of 10 days to 3 years' imprisonment, and a fine of 5,000 to 150,000 francs, to be ordered against any person found guilty of ordinary threats, i.e. "a person who threatens another, in writing or by mere representation, with assault, destruction of property, or breach of domicile". Article 302 (conditional threats) prescribes a penalty of between 10 days and 6 months, and a fine of 5,000 to 25,000 francs, to be ordered against any person who threatens another, even implicitly, with assault, in seeking to impose an order or condition. Article 303 (blackmail) prescribes a penalty of from one to five

years' imprisonment, and a fine of from 200,000 to 2 million francs, to be ordered against any person who threatens another with defamation or breach of secrecy, in seeking to impose an order or condition.

80. However, the Penal Code takes the protection of the victims of crime and of witnesses even further by imposing penalties for certain forms of conduct which may occur in the course of criminal proceedings. For instance, article 164 sanctions false testimony, i.e. evidence given during a court case which may influence the court's decision and which can no longer be withdrawn. In similar vein, article 168 sanctions the suppression and the fabrication of evidence, i.e., where any person, for the purpose of influencing judicial proceedings (a) suppresses relevant evidence, or prevents a witness from appearing; (b) fabricates or makes use of false material evidence, or deliberately misleads a witness; (c) extracts from anyone a promise not to report a crime or a correctional offence, or not to give evidence. Finally, article 173 sanctions defaulting witnesses, i.e. (a) any person duly summoned as a witness who fails to appear, except on legitimate grounds, or who refuses to take the oath or to testify; (b) a person who, having publicly denounced a crime or a correctional offence and having publicly stated that the perpetrators or the accomplices are known to him, refuses to reply to questions put in connection with the offence by a competent magistrate, or evades questioning.

Article 14

81. Every victim of an offence may institute a civil action for damages, either in ancillary proceedings in the criminal court which is trying the main prosecution case, or as a principal action in the competent civil court (the court of major jurisdiction or the court of first instance, depending on whether the amount of the claim exceeds the threshold of 5 million CFA francs). In practice, the victim will be best advised to pursue his claim through the public proceedings brought by the prosecutor's office in prosecution of the crime, since this has the advantage of saving time as well as the sometimes exorbitant cost of a civil action.

82. As for compensation itself, the basic principles are those set out in articles 1382 and 1383 of the Civil Code, as follows: Article 1382: "Any act which causes damage to another person incurs for the person responsible the obligation to make redress". Article 1383: "Every person is liable for any damage which he has caused not only by his actions, but also through negligence or lack of due diligence. The maximum amount of the compensation is equivalent to the actual loss, according to the formula "the loss, the whole loss, and nothing but the loss". If the victim has died, his heirs will inherit his right to compensation.

Article 15

83. The purpose of this article is clear and readily understandable: to cancel out any advantage gained from torture, the better to discourage its use. Cameroonian law reflects the same concerns. Here it should be pointed out that, unlike the rules of civil procedure, where the various categories of evidence are exhaustively listed together with the methods of furnishing evidence and the probative value of each kind of evidence, the principle which

applies in criminal cases, and therefore in cases of torture, is the principle of evidentiary freedom. Any and all kinds of evidence which may be advanced (testimony, expert reports, confessions, presumptions, circumstantial evidence) will be appraised on their merits by the court. The evidence must, however, have been gathered subject to certain rules. Hence no confession obtained by using torture will be admissible against a victim of such acts. The same applies to any other form of testimony. On the other hand, statements of this kind may be used to determine that acts of torture have taken place, in the context of proceedings instituted against their perpetrator pursuant to article 13.

Article 16, paragraph 1

84. The criminal law of Cameroon is unyielding and unambiguous in its opposition to torture. Article 615 of the Code of Criminal Investigation states outright that "the use of force in the process of arrest, detention or execution of a sentence is a crime except where authorized by law". As a result, few acts of the kind referred to in this article of the Convention are outside the reach of the Penal Code of Cameroon. The comments already made concerning article 4, paragraph 1, seek to show that the Penal Code is a wide-ranging and effective deterrent against torture, because of the large number of offences proscribed under it. The various categories of offence provide ample scope for indictment, and although the grounds for indictment are sometimes parallel or complementary, they are invariably effective. In conjunction, therefore, they readily lend themselves to the requirements of articles 10, 11, 12 and 13 above.

Article 16, paragraph 2

85. We have no comment to make on the fact that the provisions of this Convention apply cumulatively with the provisions of all other international instruments or national laws which reflect the same concerns.